

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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BRANDON VILLACIS,

PLAINTIFF,

COMPLAINT

-AGAINST-

19-CV-11510

NEW YORK CITY, POLICE OFFICER JIMMIE
MOORE, and POLICE OFFICER MICHAEL HEINZ,
individually, and in their capacity as members of the New
York City Police Department,

DEFENDANTS.

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PRELIMINARY STATEMENT

1. This is a civil action in which plaintiff Mr. Brandon Villacis (“Mr. Villacis”) seeks relief for the violation of his rights secured by 42 USC 1983, the Fourth and Fourteenth Amendments to the United States Constitution.
2. The claims arise from an incident on or about November 29, 2017, in which officers of the New York City Police Department (“NYPD”), acting under color of state law, intentionally and willfully subjected Mr. Villacis to *inter alia* excessive force and denial of right to a fair trial.
3. Plaintiff seeks monetary damages (special, compensatory and punitive) against Defendants and an award of costs and attorneys’ fees, and such other and further relief as the Court deems just and proper.

JURISDICTION

4. This action is brought pursuant to 28 USC 1331, 42 USC 1983, and the Fourth and Fourteenth Amendments to the United States Constitution.
5. Venue is laid within the United States District Court for the Southern District of New York in that the events giving rise to the claim occurred within the boundaries of the Southern District of New York.

PARTIES

6. Plaintiff, Mr. Villacis, is a citizen of the United States and currently resides in Harlem, New York.
7. New York City is a municipal corporation organized under the laws of the State of New York.
8. Police Officer Moore (“PO Moore”) and Police Officer Heinz (“PO Heinz”) at all times here relevant were members of the NYPD, and are sued in their individual and professional capacities.
9. At all times mentioned, defendants were acting under color of state law, under color of the statutes, ordinances, regulations, policies, and customs and usages of the City of New York.

FACTUAL ALLEGATIONS

10. Mr. Villacis is 28-years old and works as a FedEx truck driver.
11. On or about November 29, 2017, at approximately 3:00 pm, Mr. Villacis was travelling eastbound on East Tremont Avenue in the Bronx.
12. Mr. Villacis was pulled over by an unmarked police vehicle.

13. Mr. Villacis parked on East Tremont Avenue at the intersection with Coddington Avenue
14. PO Heinz exited the police vehicle and approached the driver's side of Mr. Villacis' vehicle.
15. PO Heinz asked Mr. Villacis for his license, registration, and proof of insurance.
16. PO Moore exited the police vehicle and approached the passenger side of Mr. Villacis vehicle.
17. Mr. Villacis informed the officers that he had lost his driver's license, but had identification in the form of his passport in the glove compartment.
18. Mr. Villacis also informed the officers that he had a small amount of marihuana in the ashtray of his vehicle.
19. Mr. Villacis reached into his glove compartment to retrieve his identification, at which point PO Heinz started to punch Mr. Villacis in the face repeatedly.
20. PO Moore then came around to the driver's side of the vehicle and sprayed mace in Mr. Villacis' face.
21. PO Heinz and PO Moore grabbed Mr. Villacis and pulled Mr. Villacis out of his vehicle and threw him on the ground.
22. PO Heinz continued to punch Mr. Villacis while he lay on the ground.
23. Mr. Villacis' eyes were stinging from the mace.
24. Mr. Villacis' clothes were ripped as a result of being grabbed and thrown to the ground by the officers.
25. Mr. Villacis was handcuffed behind his back.
26. The handcuffs were extremely tight and caused Mr. Villacis pain in his wrists.

27. Mr. Villacis asked the officers to loosen the handcuffs, but they refused.
28. The officers placed Mr. Villacis in the police vehicle and took him to PSA8, where he was processed.
29. Mr. Villacis requested a change of clothes because his clothes had been ripped by the officers.
30. The officers got a change of clothes for Mr. Villacis from his vehicle.
31. Mr. Villacis requested medical attention and was taken to Jacobi Medical Center by ambulance.
32. PO Moore accompanied Mr. Villacis to the hospital.
33. Mr. Villacis was treated at the hospital then taken back to the precinct.
34. Mr. Villacis was held at the precinct until approximately 3:00 am on November 30, 2017, at which time he was taken to Central Bookings.
35. Mr. Villacis was charged with Resisting Arrest, Criminal Possession of Marijuana, and Reckless Driving.
36. In the Criminal Court Complaint, PO Moore falsely stated that Mr. Villacis “pinned his arms underneath him” and “began rolling on the ground with his arms tucked underneath him in an effort to avoid being handcuffed.”
37. Mr. Villacis pled guilty to Disorderly Conduct.
38. Mr. Villacis continues to feel traumatized by the events of November 29, 2017, and is wary and fearful when he sees police officers.
39. Mr. Villacis suffered physical injuries as result of the incident, including injuries to his face, neck, eyes, wrists, and back.

40. Mr. Villacis suffered following the incident and feels fear, embarrassment, humiliation, emotional distress, frustration, anxiety, and loss of liberty.

FIRST CAUSE OF ACTION

(42 USC 1983 – Excessive Force)

41. Plaintiff repeats and realleges each of the preceding allegations of this Complaint as if fully set forth herein.

42. Defendants have deprived Plaintiff of his civil, constitutional and statutory rights under color of law and are liable to Plaintiff under 42 USC 1983.

43. Defendants have deprived Plaintiff of his right to be free of unreasonable searches and seizures, pursuant to the Fourth and Fourteenth Amendments to the United States Constitution, in that Defendants used excessive and unreasonable force in effecting the arrest of Plaintiff.

44. Plaintiff has been damaged as a result of Defendants' actions in an amount believed to equal or exceed the jurisdictional limit of this Court.

SECOND CAUSE OF ACTION

(42 USC 1983 –Denial of Right to a Fair Trial)

45. Plaintiff repeats and realleges each of the preceding allegations of this Complaint as if fully set forth herein.

46. Defendants have deprived Plaintiff of his civil, constitutional and statutory rights under color of law and are liable to Plaintiff under 42 USC 1983.

47. Defendants have deprived Plaintiff of his right to a fair trial, pursuant to the Sixth and Fourteenth Amendments to the United States Constitution.
48. Defendants created false information likely to influence a jury's decision and then forwarded that information to prosecutors, resulting in Plaintiff suffering a deprivation of liberty and a violation of his rights.
49. Plaintiff has been damaged as a result of Defendants' actions in an amount believed to equal or exceed the jurisdictional limit of this Court.

JURY DEMAND

WHEREFORE, Plaintiff respectfully requests that the court enter a Judgment against Defendants together with costs and disbursements as follows:

In favor of Plaintiff in an amount to be determined by a jury, but at least equal or exceeding the jurisdictional limit of this Court for each of Plaintiff's causes of action;

Awarding Plaintiff punitive damages in an amount to be determined by a jury;

Awarding Plaintiff reasonable attorneys' fees, costs and disbursements of this action; And such other and further relief as the Court deems just and proper.

Dated: New York, New York
December 16, 2019

By: _____ /s/
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